A **FINTREE CAPITAL SDN BHD v. TETUAN SYED IBRAHIM & CO**

HIGH COURT MALAYA, KUALA LUMPUR
LEONG WAI HONG JC
[ORIGINATING SUMMONS NO: WA-24NCVC-2274-07-2022]
5 APRIL 2023

B

Abstract – *A request can be made by a client, to the court, to tax his solicitor's bill pursuant to s. 121(1)(b) of the Legal Profession Act 1976 ('LPA'), provided that the conditions in the said provision are met. The client need not make the request for taxation within the timelines provided in ss. 126 and 128 of the LPA as both sections are irrelevant to an application under s. 121(1)(b).*

C

D ***LEGAL PROFESSION:*** *Bill of costs – Professional legal fees – Taxation – Non-payment of invoice based on allegation that invoice was excessive – Application by client to tax invoice on solicitor and client basis – Whether invoice ought to be taxed pursuant to s. 121(1)(b) of Legal Profession Act 1976 ('LPA') – Whether conditions under s. 121(1)(b) of LPA satisfied – Whether s. 121(1)(b) must be read subject to ss. 126 and 128 of LPA – Whether client barred from seeking order for taxation*

E

The defendant was a legal firm that represented, *inter alia*, the plaintiff in a three-day litigation proceeding at the High Court. Following their discharge as solicitors, the defendant raised an invoice for professional fees to the plaintiff in the amount of RM250,000. However, the plaintiff did not pay the

F said invoice and this prompted the defendant to file a writ and statement of claim against the plaintiff, at the Sessions Court, for payment of the invoice. The plaintiff, on the other hand, filed the present application to tax the invoice on a solicitor and client basis. The plaintiff asserted that the invoice was excessive for only three days of work. In the present application, the issue that arose for adjudication was whether the court ought to order the

G invoice to be taxed, pursuant to s. 121(1)(b) of the Legal Profession Act 1976 ('LPA'). The defendant argued that s. 121(1)(b) must be read subject to ss. 126 and 128 of the LPA and, subsequently, the plaintiff was barred from seeking an order for taxation under s. 121(1)(b) of the LPA, by the timelines in ss. 126 and/or 128 of the LPA.

H

Held (allowing application):

(1) A client can request the court to tax his solicitor's bill, under s. 121(1)(b) of the LPA, if the conditions therein are satisfied. The plaintiff had satisfied all the conditions in s. 121(1)(b) of the LPA. Sections 126 and

I 128 of the LPA were not relevant to an application under s. 121(1)(b) of the LPA; the client need not make the request for taxation within the timelines stated in ss. 126 and 128. (paras 53 & 70)

Case(s) referred to:

Awan Timur Palm Oil Mill Resources (Perak) Sdn Bhd v. Tetuan Shahrizal & Nasir [2021] 1 LNS 71 HC ***(refd)***

Harry Lee Wee v. Haw Par Brothers International Ltd [1980] 2 MLJ 228 ***(refd)***

John Ang & Jega v. Kulasingam Sinatamby [2001] 2 CLJ 198 HC ***(refd)***

Lim Goay Hooi v. Tetuan Choy & Associates; Lim Ho Peng (Proposed Intervener) [2021] 1 LNS 2248 HC ***(refd)***

Lim Kien Seng & Anor v. Manoharan Kandasamy [2021] 2 CLJ 307 FC ***(refd)***

Mindvalley Labs Sdn Bhd v. Messrs Rao & Kamal [2016] 1 LNS 1303 HC ***(refd)***

Muhammed Shareef Mohamed Sagubar v. Tetuan Idris & Associates And Another Appeal [2022] 1 CLJ 796 HC ***(refd)***

Setali Development Sdn Bhd & Anor v. Lim You Keng [1983] 2 CLJ 250; [1983] CLJ (Rep) 359 FC ***(refd)***

SP Veloo & Co v. Affin Bank Bhd [2017] 1 LNS 1041 CA ***(refd)***

Tan Chee Hoe & Anor v. United Malayan Banking Corporation [1996] 2 CLJ 1102 HC ***(refd)***

Tetuan Kang & Kang v. Kirana Studio Sdn Bhd [2015] 1 CLJ 431 HC ***(refd)***

Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd [1999] 1 CLJ 239 HC ***(refd)***

Legislation referred to:

Companies Act 2016, s. 414(2)

Legal Profession Act 1976, ss. 116, 121(1)(b), (2), 124(1), 126(1), 128(1), 129, 130, 132, 134

Rules of Court 2012, O. 3 r. 1

For the plaintiff - Douglas Yee & Chua Pei Nee; M/s Douglas Yee

For the defendant - Mohamed Izzul Faris & Khavenesh Devanandan; M/s Syed Ibrahim & Co

Reported by Najib Tamby

JUDGMENT

Leong Wai Hong JC:

Introduction

[1] The application before me (encl. 17) concerns the right of a court litigant to tax his solicitors' bill under s. 121(1)(b) of the Legal Profession Act 1976 ("LPA") on the ground that the fees charged by his solicitors is excessive.

[2] The defendant solicitors in this case ("Tetuan Syed Ibrahim & Co") opposed the application on the ground that the plaintiff their client ("Fintree") had lost the right to challenge their bill as the deadlines to challenge under ss. 126(1) and 128 of the LPA had expired.

[3] One would have thought that these three sections would not pose such difficulties in interpretation. But they do as will be seen when I analyse the decided cases.

[4] I had allowed Fintree's application on 7 March 2023. Tetuan Syed Ibrahim & Co has filed an appeal to the Court of Appeal. These are my grounds of judgment.

Background Facts

[5] The background facts are basically undisputed.

[6] Tetuan Syed Ibrahim & Co is a legal firm and had represented one Liew Chia Soon ("Liew") and Fintree in a litigation proceeding in Kuala Lumpur High Court Suit No. WA-22NCC-623-12/2020 ("Suit 623"). Liew and Fintree were the first and second defendants respectively.

[7] The representation was for three days from 12 January 2021 to 14 January 2021.

(See encl. 2 plaintiff's affidavit in support para. 9 and defendant's reply affidavit dated 22 August 2022 at para. 10).

[8] Following Tetuan Syed Ibrahim & Co's discharge as solicitors on 14 January 2021, an invoice dated 15 January 2021 for professional fees of RM50,000 was raised by them for Liew to pay. They also raised an Invoice No. 538/(01)/2021 dated 15 January 2021 for professional fees of RM250,000 for Fintree to pay. ("invoice").

(See encl. 2 plaintiff's affidavit in support, exhs. A-2 and A-3, pp. 40 and 43 and defendant's reply affidavit dated 22 August 2022 at paras. 9 and 11).

[9] Both invoices are for work done by Tetuan Syed Ibrahim & Co for Liew and Fintree in Suit 623.

[10] Liew applied for his invoice to be taxed on the ground it was way excessive. The High Court reduced the professional fees claimed from RM50,000 to RM15,000. (See encl. 2 plaintiff's affidavit in support, exhs. A-3 and A-4, pp. 40 to 48).

[11] Fintree did not pay the invoice of RM269,199.

[12] It is Fintree's pleaded case that after the invoice was received on or around 15 January 2021 one Datuk Mohd Afrizan was appointed the interim judicial manager of Fintree only five days later on 20 January 2021. The appointment of Datuk Mohd Afrizan was challenged and set aside by the Court of Appeal on 21 February 2022. Despite this order, Datuk Mohd Afrizan did not return Fintree's assets, goods, documents and records. These were only returned after Liew and Fintree obtained an injunction order on 12 April 2022.

(See encl. 18 plaintiff's supplementary affidavit paras. 8.1 to 8.11).

[13] The plaintiff also submitted that during the time Datuk Mohd Afrizan was Fintree's interim judicial manager, he effectively assumed sole and full control of Fintree pursuant to s. 414(2) of the Companies Act 2016. (See plaintiff's written submissions at para. 43).

Court Proceedings

[14] On 27 June 2022, Tetuan Syed Ibrahim & Co filed a writ and statement of claim against Fintree in Kuala Lumpur Sessions Court Suit No. WA-A52NCVC-458-06/2022 ("Suit 458") for payment of the invoice. (See encl. 2 plaintiff's affidavit in support, exh. A-1, pp. 10 to 37).

[15] The writ and statement of claim for Suit 458 was subsequently served on Fintree on 29 June 2022.

[16] An originating summons was filed by Fintree on 28 July 2022 pursuant to s. 121(1)(b) of the LPA to tax on a solicitor and client basis the invoice.

[17] Fintree asserts the invoice was way excessive for only three days of work. More so, when the fees from the invoice rendered to Liew by Tetuan Syed Ibrahim & Co is included.

[18] The originating summons was subsequently amended as amended originating summons (encl. 17) to add as prayer 1 a prayer for an extension of time to apply to tax the invoice in the event an extension of time was required.

[19] The amended originating summons prayed for the following reliefs in its original language:

> 1. Bahawa satu Lanjutan Masa sehingga 28 July 2022 diberikan kepada Plaintif untuk memohon supaya Invois Defendan iaitu Invois No. 538/(01)/2021 bertarikh 15-01-2021 yang berjumlah RM269,199.00 ditetapkan/dicukaikan/ditaksirkan (taxed) atas dasar peguam dan anak guam (solicitor and client basis);
>
> 2. Bahawa Invois Defendan iaitu Invois No. 538/(01)/2021 bertarikh 15-01-2021 yang berjumlah RM269,199.00 ditetapkan/dicukaikan/ditaksirkan (taxed) atas dasar peguam dan anak guam (solicitor and client basis);
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> 3. Bahawa kos bagi tindakan di sini hendaklah ditanggung oleh Defendan.

Issues Before This Court

[20] There are two issues before me. They are:

(i) whether this court ought to order the invoice to be taxed pursuant to s. 121(1)(b) of the LPA?; and

(ii) whether an extension of time is required by Fintree to apply to tax the invoice and if so, whether such extension of time ought to be granted?

A **Issue (i)**

Whether This Court Ought To Order The Invoice To Be Taxed Pursuant To Section 121(1)(b) Of The LPA?

[21] This issue requires consideration of ss. 121(1)(b), 126(1), 128(1) and
B (2) and 132 of the LPA.

[22] Section 121(1)(b) of the LPA reads as follows:

Where remuneration of advocate and solicitor not subject of agreement

121(1) **Where the remuneration of an advocate and solicitor in respect of**
C **contentious business done by him is not the subject of an agreement made pursuant to s. 116**, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum:

Provided that:

D (a) At any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him *in lieu* of the cost a bill containing detailed items, and the gross sum bill shall thereupon be
E of no effect;

(b) **Where an action is commenced on a gross sum bill**, the court shall, if so requested by the party chargeable therewith **before the expiration of one month from the service** on that party of the writ or other originating process, order that the bill shall be taxed;

F (c) …

(2) Subsection (1) shall not apply to fees paid to an advocate and solicitor **who is briefed as a senior counsel**. (emphasis added)

[23] Section 126(1) of the LPA reads as follows:

G 126 An order for taxation of costs to be made within 6 months of delivery of bill of costs

(1) **An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition** as a matter of course by the party chargeable therewith, or by any person liable to pay the
H cost either to the party chargeable or to the advocate and solicitor, **at any time within six months from the delivery of the bill**, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery. (emphasis added)

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[24] Section 128 of the LPA provides that:

> Order for taxation of advocate and solicitor's bill on notice given
>
> 128(1) **After the expiration of six months from the delivery of a bill of costs**, or after payment of the bill of costs, **no order shall be made for taxation of a solicitor's bill of costs, except** upon notice to the advocates and solicitors and **under special circumstances to be proved to the satisfaction of the court**.
>
> (2) **No such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs**. (emphasis added)

[25] Section 132 of the LPA reads as follows:

> Bill of costs to follow Rules of Court
>
> 132. Bills of costs for taxation as between advocate and solicitor and client shall be drawn in the manner provided by *the Rules of the High Court, and the taxation shall be governed by the Rules.

Is Section 121(1)(b) Subject To Sections 126 And/Or 128 Of The LPA?

[26] I begin my analysis of issue (i) by examining whether s. 121(1)(b) is subject to ss. 126 and/or 128 of the LPA.

[27] This is because the crux of the submissions of Tetuan Syed Ibrahim & Co is that issue (i) should be answered in the negative as Fintree is barred by the timelines in ss. 126 and/or 128 of the LPA from seeking an order for taxation under s. 121(1)(b) of the LPA.

[28] In short, Tetuan Syed Ibrahim & Co asserts that s. 121(1)(b) must be read as subject to ss. 126 and/or 128 of the LPA.

[29] There is an apparent conflict between on the one hand, s. 121(1)(b) and on the other hand, s. 126(1) read with s. 128(1) and (2) of the LPA. The conflict will arise if s. 121(1)(b) is read as subject to ss. 126 and/or 128 of the LPA.

[30] The apparent conflict arises in this way:

(i) the apparent conflict arises when a solicitor delivers a gross sum bill which was not paid but the action is commenced for non-payment after the expiry of six months from its delivery;

(ii) the client cannot obtain an order for taxation as a matter of course as the six-month period prescribed by s. 126(1) read with s. 128(1) would have expired unless there are special circumstances in his favour; and

(iii) but s. 121(1)(b) would appear to entitle him to have the gross sum bill taxed upon application to the High Court if he does so before the expiration of one month from the service of the writ or other originating process for the recovery of the fees even though the six-month period

from delivery of the gross sum bill had expired. This is because of the clear wording of s. 121(1)(b) and the fact that s. 121(1)(b) is not stated to be subject to s. 126(1) and/or s. 128(1) of the LPA.

[31] This apparent conflict was considered in two High Court cases. They are *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd* [1999] 1 CLJ 239 Augustine Paul J and *John Ang & Jega v. Kulasingam Sinatamby* [2001] 2 CLJ 198; [2001] 2 MLJ 605 Abdul Malik Ishak J.

[32] In *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd* [1999] 1 CLJ 239, Augustine Paul J reconciled the apparent conflict by holding at pp. 251(g) to 252 (b) that:

(i) section 126(1) read with s. 128 of the LPA apply only to a bill of costs that contains detailed items that is ready for taxation within the meaning of s. 132. They do not apply to a gross sum bill;

(ii) a gross sum bill is only subject to the timeline as stated in s. 121(1)(b) of the LPA; and

(iii) section 121(1)(b) is not subject to s. 126(1) and/or s. 128 of the LPA.

[33] This is what Augustine Paul J said in *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd* [1999] 1 CLJ 239 at pp. 251(g) to 252(b):

> The reference in s. 126(1) to the right of taxation of a bill of costs clearly contemplates a bill of costs that is ready for taxation within the meaning of s. 132 read with O. 59 r. 24. As s. 128(1) refers to the six-month period in s. 126(1) it must also refer to a bill in the same form. Furthermore, the reference to taxation of a gross sum bill under s. 121(1)(b) and (c) with special powers conferred on the taxing officer by that section clearly excludes a gross sum bill from the ambit of ss. 126 and 128. Accordingly, *a gross sum bill cannot come within the scope of ss. 126(1) and 128(1) for the plain reason that no order for taxation can be made on it except as authorised by s. 121(1)(b). I therefore hold that the phrase "bill of costs" in ss. 126(1) and 128(1) cannot accommodate a gross sum bill* as it is not a bill in taxable form within the meaning of s. 132 read with O. 59 r. 24. *To hold otherwise would lead to an absurdity. Thus, the six-month period prescribed by s. 126(1) and the injunction imposed by s. 128(1) do not apply to a gross sum bill. The law applicable to a gross sum bill would therefore be as stated in s. 121.* (emphasis added)

[34] *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd* [1999] 1 CLJ 239 Augustine Paul J was followed in *Mindvalley Labs Sdn Bhd v. Messrs Rao & Kamal* [2016] 1 LNS 1303 at (20 to 23) by Hanipah Farikullah J.

[35] The second case, besides *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd* [1999] 1 CLJ 239 Augustine Paul J, that considered whether s. 121(1)(b) is or is not subject to ss. 126(1) and 128 of the LPA is *John Ang & Jega v. Kulasingam Sinatamby* [2001] 2 CLJ 198; [2001] 2 MLJ 605 HC Abdul Malik Ishak J.

[36] Abdul Malik Ishak J disagreed with Augustine Paul J's view in *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd* [1999] 1 CLJ 239 that s. 121 of the LPA governs gross sum bills whereas ss. 126 and 128 of the LPA govern detailed bills. This is what Abdul Malik Ishak J said at p. 635(e) to (g):

> The rules governing taxation of gross sum bills
>
> *According to Yau Jiok Hua, s. 121 of the Act governs gross sum bills whereas ss 126 and 128 of the Act govern detailed bills. With respect, to adopt this kind of interpretation would lead to the unrealistic construction* that the whole of Part IX is inapplicable to gross sum bills or gross sum bills in contentious matters. This would certainly lead to an absurd eventuality. It would mean that there are no written rules whatsoever governing taxation of gross sum bills. For instance, s 129 of the Act provides that all petitions by a party chargeable with a 'bill of costs' shall contain a submission by the party to pay the amount of the 'bill of costs' to the solicitor when taxed. However, when applying Yau Jiok Hua, this provision would lead to detailed bills only. Yet another instance would be s. 134 of the Act which sets out the one sixth rule in relation to costs of taxation. And if one follows Yau Jiok Hua, this provision should only apply to detailed bills. (emphasis added)

[37] But on the issue whether s. 121(1)(b) is or is not subject to s. 126(1) and s. 128 of the LPA, Abdul Malik Ishak J agreed with *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd* [1999] 1 CLJ 239. His rational may be different from Augustine Paul J's as set out above but on the said issue Abdul Malik Ishak J agreed that s. 121(1)(b) is not subject to ss. 126(1) and 128 of the LPA.

[38] This is what Abdul Malik Ishak J said at pp. 631(b) to 634(a):

> *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd*
>
> *Augustine Paul J held in Yau Jiok Hua that when there was an apparent conflict between s. 121(1)(b) of the Act on the one hand with that of s 126(1) of the Act and s. 128(1) of the Act on the other hand* and in order to avoid the conflict, *the latter provisions must be construed to refer only to a bill of costs containing the detailed items and not to a gross sum bill. With respect, I beg to disagree* and I will advance the reasons in due course ...
>
> With respect, it is my considered view that there is in fact no conflict whatsoever between the two sets of provisions for the following reasons:
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> > *The scheme of the Act gave different roles to s. 121 and ss. 126/128 of the Act.*
> >
> > In my considered view, s. 121 and ss. 126/128 of the Act have totally different roles to play. Section 121 of the Act is comprised in Part VIII of the Act and it is entitled: 'Remuneration of Advocates and Solicitors'. While ss. 126 and 128 of the Act are comprised in Part IX of the Act entitled 'Recovery and Taxation of Costs'. It must be emphasised that these are the only two Parts governing costs which appear in the Act.

A ...

General and specific provisions

Sections 126 and 128 of the Act are general in nature, whereas proviso (b) to s 121(1) of the Act is specific. Section 121(1) of the Act by itself is confined to contentious business. *Proviso (b) to s. 121(1) of the Act applies to gross sum bills only. Now, in applying the rule of construction as found in the maxim generalia specialibus non derogant, both the specific rule in s. 121(1)(b) of the Act and the general rule in ss. 126 and 128 of the Act must be allowed to operate independently and harmoniously*. (emphasis added)

[39] Abdul Malik Ishak J went on to give his conclusion that s. 121(1)(b) is not subject to ss. 126 or 128 of the LPA. He said at p. 65 B:

Using these principles as guidelines, it is my considered view that *s. 121(1)(b) of the Act comes into play only when certain specific conditions spelt out there in exists and these conditions may be listed as follows*:

(i) the business done or undertaken by the solicitor must be confined to contentious business;

(ii) the remuneration of the solicitor must not be the subject of an agreement;

(iii) the bill, which must have been delivered to comply with s. 124 of the Act, must be a gross sum bill; and

(iv) an action must have been commenced on the gross sum bill.

and *only when these conditions exist will the client have one month from the date of the service of the writ to request the court to tax the bill. In this kind of situation, the fact that the six-month period under s 126 of the Act has or has not expired should not be a relevant consideration.* (emphasis added)

[40] Fintree also cited the recent Federal Court decision in *Lim Kien Seng & Anor v. Manoharan Kandasamy* [2021] 2 CLJ 307 by Abdul Rahman Sebli FCJ in support of its contention that s. 121(1)(b) of the LPA is not subject to the timelines under ss. 126 and 128 of the LPA.

[41] With respect, this issue was not directly before the Federal Court and the judgment of the Federal Court does not state clearly the proposition that Fintree contends. This can be seen from the fact that both *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd* [1999] 1 CLJ 239 Augustine Paul J and *John Ang & Jega v. Kulasingam Sinatamby* [2001] 2 CLJ 198; [2001] 2 MLJ 605 HC Abdul Malik Ishak J were not cited and discussed in the judgment.

[42] The Federal Court in *Lim Kien Seng & Anor v. Manoharan Kandasamy* [2021] 2 CLJ 307 Abdul Rahman Sebli FCJ was dealing with an application by a solicitor under s. 126(1) of the LPA for an order to tax a detailed bill of costs billed to his client.

[43] The Federal Court was not dealing with an application to tax a gross sum bill of costs under s. 121(1)(b) of the LPA. Neither was the Federal Court asked to consider whether s. 121(1)(b) of the LPA is subject to the timelines under ss. 126 and 128 of the LPA. This is what Abdul Rahman Sebli FCJ said at [13] (iii)]:

> **Where a gross sum bill of costs is delivered, a taxation** without the delivery of a detailed **bill is only permitted under s. 121(1)(b)** of the LPA. **In all other cases**, where an order for taxation is applied for, **then it must be applied for on the basis of a detailed bill of costs that fulfills the requirements of s. 132** of the LPA, such bill of costs having been delivered on the party chargeable. (emphasis added)

[44] *Lim Kien Seng & Anor v. Manoharan Kandasamy* [2021] 2 CLJ 307 FC on a closer reading can stand for these propositions:

(i) when a gross sum bill of costs is delivered, an application for taxation is governed by s. 121(1)(b) of the LPA; and

(ii) when a detailed bill of costs is delivered, an application for taxation is governed by ss. 126 and 128 of the LPA.

[45] The upshot is that *Lim Kien Seng & Anor v. Manoharan Kandasamy* [2021] 2 CLJ 307 FC indirectly supports Fintree's contention that s. 121(1)(b) of the LPA is not subject to the timelines under ss. 126 and 128 of the LPA.

[46] I have reviewed the cases cited by Tetuan Syed Ibrahim & Co as supporting their contention that s. 121(1)(b) of the LPA is subject to the timelines under ss. 126 and 128 LPA. These cases are *SP Veloo & Co v. Affin Bank Bhd* [2017] 1 LNS 1041; [2017] MLJU 1042 CA; *Tetuan Kang & Kang v. Kirana Studio Sdn Bhd* [2015] 1 CLJ 431 HC; *Muhammed Shareef Mohamed Sagubar v. Tetuan Idris & Associates & Another Appeal* [2022] 1 CLJ 796; [2022] 8 MLJ 447 HC; *Awan Timur Palm Oil Mill Resources (Perak) Sdn Bhd v. Tetuan Shahrizal & Nasir* [2021] 1 LNS 71; [2021] MLJU 29 HC and *Lim Goay Hooi v. Tetuan Choy & Associates; Lim Ho Peng (Proposed Intervener)* [2021] 1 LNS 2248 HC.

[47] With respect, I do not find these cases stating clearly that s. 121(1)(b) of the LPA is subject to the timelines under ss. 126 and 128 of the LPA.

[48] *SP Veloo & Co v. Affin Bank Bhd* [2017] 1 LNS 1041; [2017] MLJU 1042 CA is an application by a client for taxation of his solicitor's bill under ss. 130, 132 and 126 of the LPA. (See grounds para. (7)(f)). It is not an application by a client to tax his solicitors' bill under s. 121(1)(b) of the LPA on the ground that the fees charged by his solicitors is excessive.

[49] *Tetuan Kang & Kang v. Kirana Studio Sdn Bhd* [2015] 1 CLJ 431 HC is also not an application by a client to tax his solicitors' bill under s. 121(1)(b) of the LPA on the ground that the fees charged by his solicitors are excessive. (See grounds para. (2)).

[50] *Muhammed Shareef Mohamed Sagubar v. Tetuan Idris & Associates & Another Appeal* [2022] 1 CLJ 796; [2022] 8 MLJ 447 HC is also not an application by a client to tax his solicitors' bill under s. 121(1)(b) of the LPA on the ground that the fees charged by his solicitors are excessive. (See grounds para. (24)).

[51] *Awan Timur Palm Oil Mill Resources (Perak) Sdn Bhd v. Tetuan Shahrizal & Nasir* [2021] 1 LNS 71; [2021] MLJU 29 HC is also not an application by a client to tax his solicitors' bill under s. 121(1)(b) of the LPA on the ground that the fees charged by his solicitors is excessive. (See grounds paras. (1 and 7)).

[52] *Lim Goay Hooi v. Tetuan Choy & Associates; Lim Ho Peng (Proposed Intervener)* [2021] 1 LNS 2248 HC is also not an application by a client to tax his solicitors' bill under s. 121(1)(b) of the LPA on the ground that the fees charged by his solicitors is excessive. (See grounds para. (11)).

[53] To conclude on this point, I accept as good law the principle decided in both *Yau Jiok Hua v. Sykt Kilang Batu-Bata Chip Siah Sdn Bhd* [1999] 1 CLJ 239 Augustine Paul J and *John Ang & Jega v. Kulasingam Sinatamby* [2001] 2 CLJ 198; [2001] 2 MLJ 605 HC Abdul Malik Ishak J that a client can request the court to tax his solicitor's bill under s. 121(1)(b) of the LPA if the conditions therein are satisfied. Sections 126 and 128 of the LPA are not relevant to an application under s. 121(1)(b) of the LPA. The client need not make the request for taxation within the timelines stated ss. 126 and 128 of the LPA.

Whether Fintree Has Satisfied The Conditions In Section 121(1)(b) Of The LPA To Request The Court To Tax Tetuan Syed Ibrahim & Co's Invoice?

[54] In the premises, I will now proceed to the next step in my enquiry. Which is whether Fintree has satisfied the conditions in s. 121(1)(b) of the LPA to request the court to tax Tetuan Syed Ibrahim & Co's invoice.

The Law On Section 121(1)(b) Of The LPA

[55] Section 121(1)(b) of the LPA can only be invoked by a client to tax his solicitor's bill if:

(i) the work done by the solicitor is in respect of contentious business;

(ii) the remuneration of the solicitor must not be the subject of a fee agreement under s. 116 of the LPA;

(iii) the bill must be a gross sum bill;

(iv) the solicitor has commenced an action by writ or other originating process on the unpaid gross sum bill;

(v) the client had filed an application to the High Court, before the expiration of one month from the service on the client of the writ or other originating process, for an order that the bill be taxed; and

(vi) the fees are not paid to an advocate and solicitor who is briefed as a senior counsel. (See s. 121(2) of the LPA).

[56] Conditions (i), (ii) and (iii) are common ground and undisputed. However, Tetuan Syed Ibrahim & Co contends conditions (iv), (v) and (vi) are not satisfied.

Condition (iii) – The Invoice Is A Gross Sum Bill

[57] Fintree contends the invoice is a gross sum bill. Tetuan Syed Ibrahim & Co disagrees and says the invoice is a detailed bill of costs.

[58] The invoice can be seen in encl. 2 plaintiff's affidavit in support, exh. A-2, p. 40. In the invoice the particulars of the professional fees stated, which are identical to that in the invoice to Liew, read as follows:

Professional Fees: RM250,000

(i) Urgent perusal of all the cause papers;

(ii) Urgent preparation and filing of Notice of Application and Affidavits;

(iii) Writing and liaising with Kuala Lumpur High Court Registry;

(iv) Legal advices rendered to you; and

(v) Corresponding by letters, emails, texts with the Plaintiffs' solicitors, Messrs Iza, Ng, Yeoh & Kit.

[59] When a bill contains detailed itemisation and narration of the work done without any sum being shown against each such item, but a final lump sum figure shown to represent the costs of all the items, this is a lump sum bill.

[See *Harry Lee Wee v. Haw Par Brothers International Ltd* [1980] 2 MLJ 228 CA Spore at Held [2] Rajah J; and *Mindvalley Labs Sdn Bhd v. Messrs Rao & Kamal* [2016] 1 LNS 1303 at [24] Hanipah Farikullah J).

[60] By no stretch of the imagination therefore can the invoice be said to be a detailed bill of costs as contended by Tetuan Syed Ibrahim & Co. It is instead a gross sum bill.

Condition (v) – The Client Had Filed An Application To The High Court, Before The Expiration Of One Month From The Service On The Client Of The Writ Or Other Originating Process, For An Order That The Bill Be Taxed

[61] The issue here is the meaning of the words "before the expiration of one month". One month is not defined in the LPA. However, guidance can be sought from the ROC 2012.

[62] Under O. 3 r. 1 of the ROC 2012, a month means "a calendar month". What then is a calendar month? Is it 30 days or 31 days or is "a calendar month is a month which ended on the same date as it commenced on the previous month?"

[63] In my view, a calendar month in the LPA means a month which ended on the same date as it commenced on the previous month.

[64] The Federal Court in *Setali Development Sdn Bhd & Anor v. Lim You Keng* [1983] 2 CLJ 250; [1983] CLJ (Rep) 359; [1984] 1 MLJ 26 Hashim Yeop A Sani FJ said:

> The phrase "calendar month" has been judicially considered in many authorities but we need only mention *Migotti v. Colvill* (1879) 4 CPD 233 where it was held that "**a calendar month is a month which ended on the same date as it commenced on the previous month**." Brett, L.J. in that case puts the principle clearly as follows at pg. 238:
>
> > I am of opinion that the term a calendar month is a legal and technical meaning. The meaning of the phrase is that, in computing time by calendar months, **the time must be reckoned by looking at the calendar and not by counting days**.
>
> See also *Marren v. Dawson Bentley & Co Ltd* [1961] 2 All ER 270. Thus, for example if an act is to be done within one month from January 15, the last date for doing the act is February 15 – see Note 2 Order 3 at page 12 of the English Supreme Court Practice 1979 Vol. 1.
>
> **Since the order appealed against was made on February 28, 1982 the period of one month** under Rule 56 of the Rules of the Federal Court 1980 **runs from March 1, 1982. The notice of appeal filed on March 29, 1982 was therefore filed well within time**. (emphasis added)

[65] In *Tan Chee Hoe & Anor v. United Malayan Banking Corporation* [1996] 2 CLJ 1102, Tee Ah Sing JC held that if a defence has to be filed within one month from 15 November 1994 the last day for the defendant to file was on 15 December 1994.

[66] Therefore, as the writ and statement of claim for Suit 458 was served on Fintree on 29 June 2022 the last day for the originating summons to be filed was on 29 July 2022.

[67] In the originating summons here, it is common ground that the writ and statement of claim for Suit 458 was served on Fintree on 29 June 2022 and this originating summons was filed on 28 July 2022.

[68] Therefore, Fintree has satisfied the condition of filing an application to the High Court, before the expiration of one month from the service on them of the writ.

Condition (vi) – The Fees Are Not Paid To An Advocate And Solicitor Who Is Briefed As A Senior Counsel (See Section 121(2) Of The LPA)

[69] In my view, Tetuan Syed Ibrahim & Co has not shown that the fees claimed by them were paid to an advocate and solicitor who is briefed as a senior counsel. No evidence has been shown to prove that an external counsel had been engaged by Tetuan Syed Ibrahim & Co as a senior counsel to lead them in the litigation. The invoice also does not state so!

Conclusion On Issue (i)

[70] Therefore, I hold that Fintree has satisfied all the conditions in s. 121(1)(b) of the LPA to request the court to tax Tetuan Syed Ibrahim & Co's invoice.

[71] In view of my decision on issue (i) there is no necessity for me to rule on issue (ii) which is "whether an extension of time is required by Fintree to apply to tax the invoice and if so, whether such extension of time ought to be granted?"

Decision

[72] I allow the amended originating summons (encl. 17) with costs for an order that Tetuan Syed Ibrahim & Co's invoice be taxed on a solicitor and client basis.

[73] Lastly, I like to express my appreciation to counsel for their diligent submissions that have greatly assisted me in my judgment.